

Supreme Court, U. S.

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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75 - 1163

ROSS SHADE, Appellant,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

On Appeal From The Supreme Court of
The State of California

PETITION FOR REHEARING

ROSS SHADE, For himself,
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In this petition the appellant seeks reconsideration of this court's order dated April 19, 1976 which order dismissed his appeal for want of jurisdiction.

The appellant respectfully requests the court to reconsider and to hear arguments concerning tariff regulations and the procedures related to due process applicable to his case. After suffering financial loss, it is difficult for the appellant to pursue a crusade to correct what he knows is unjust. His jurisdictional statement was necessarily brief in order to reduce the cost of printing. It is hoped that what follows will clarify the arguments and facts that might have contributed to the initial decision of this court to dismiss his appeal.

This case concerns the right to recover the damages caused by the negligence of another. This right is important and is considered by many to be the basis for non-violent behavior in keeping with a civilized society. Any limitation on the rights of citizens to obtain justice should not be tolerated.

The appellant believes that the Public Utilities Commission of the State of California has failed to recognize that the rules which limit the amount of damages which the appellant may recover, are repugnant to the equal protection of the law provisions of the Constitution of the United States. He also believes that this limitation violates the Public Utilities Code of the State of California but was denied the opportunity to prove this in a court of law.

In those states where tariffs prevent recovery of damages from telephone companies, a substantial portion of the business community are being denied a right which is guaranteed by the Constitution of the United States. And, because the yellow pages have become one of the most important sources of business, the damages that occur each year are very large. The appellant asks why he and all the others that are damaged, should bear the loss so

that the telephone companies can maintain their rates and profits at their present level?

The actions of the Public Utilities Commission of the State of California can not be questioned, reversed or corrected by any court other than the California Supreme Court. (Section 1759 of the California Public Utilities Code) Of course, while proceedings are pending before the Commission, there is always the expectation that due process will be observed.

The California Public Utilities Commission is composed of individuals none of whom have legal experience. It is unreasonable to expect, under these circumstances, that due process will be observed in all instances. The Commission as formulated, is not qualified to deal with the constitutional questions. Without the right to be heard in an appeal before a qualified court complainants really have no guarantee that their proceedings before the Commission will not be a sham.

There was never any question that the Pacific Telephone Company was negligent in their omission from the yellow pages of the professional listing for the appellant's firm. The order of the Commission was that, because of this negligence, the Pacific Telephone Company was to allow a credit against the telephone charges, which reduced the amount that the appellant had to pay for service by no more than six hundred dollars. The Commission has repeatedly held that it has no authority to award damages (W. Schumacher v P.T.&T. Co., Decision No. 69025, 64 Cal. P.U.C. 295; M. W. McDaniel v P.R.&T. Co., Decision No. 69568, 64 Cal. P.U.C. 707) but have prohibited the courts from determining and awarding damages in the case of ordinary negligence and have limited the amount in the case of gross negligence. (Rule 14 "Limitation

of Liability - page 3 of Jurisdictional Statement.

In the case of Product Research Associates v Pacific Telephone Company, (16 C.A. 3d 651) in April 1971, the Court of Appeal in California held that the rule of which the appellant complains, (limitation of damages) did not prevent the courts from awarding damages. In 1973 that court again held that the Commission's rules did not prohibit the awarding of damages. (Waters v. Pacific Telephone, 16 C.A. 3d 651) When the appellant filed his complaint with the Public Utilities Commission in 1973, this was then the status of the law in California. However, without considering the constitutional issues the Supreme Court of the State of California, over-ruled the lower court on July 9, 1974. (Waters v. Pacific Telephone Co., 12 C 3d 1) Even through the appellant's hearing before an employee of the Commission was in December 1973 and final briefs had been filed in February 1974, the case was still pending at July 9, 1974. The case was also still pending on September 12, 1974 when the appellant petitioned the Commission to consider the new circumstances brought about by the decision in the Waters case. Even through the appellant does not agree with the contention of the attorney for the telephone company to the effect that the Commission is a "court", he asked the Commission to consider the question because he has a civil action pending and under the new circumstances might be denied his right to recover damages in that action. The first real opportunity to raise the constitutional issues was the Supreme Court of the State of California and that court denied him a hearing.

The grant of jurisdiction contained in Article III of the Constitution is sufficiently broad to insure that no policies of major moment need be excluded from this Court's inspection. The question of limitation of damages is important to all

persons who depend on the business obtained from their listing in the yellow pages of the telephone directory. This Court has ruled on the question of limited damages before - but never in any case where that limitation was unreasonable, (i.e. when the appellant had an alternative such as to allow him to insure against possible damages) nor in any case where the damage was the result of gross negligence.

The standing to raise the federal question is also dependent upon state rules, but only if the state rules in this respect are reasonable and subject always to the ultimate and independent judgment of the Supreme Court of the United States. (Cramp v Board of Public Instruction, 368 U.S. 278) The appellant, having a case pending in the Superior Court of the State of California did ask the Public Utilities Commission in a timely manner, to consider the constitutional issue concerning limitation of damages. This request was denied. It was not reasonable to refuse to hear this argument when prior to that time the courts had not enforced the limitation of damages rule, and when the appellant had in fact questioned the reasonableness of that rule on other grounds.

The telephone companies in California nor elsewhere should not be above the law; they should not have superior rights to persons. There is no good reason why they should not be subject to a suit if, by reason of their negligence a person is damaged. Such a position is reserved for the sovereign in some countries. However, in the United States even the government has not retained such a position. Where-as, some limitation do damages was provided for: (1) Hospitals rendering free services (Silva v Providence Hospital 14 Cal 2d 762) (2) Local governmental agencies (Muskopf v Corning Hospital Dist. 55 Cal 2d 211 and Harry v Clyde Park Dist. 32 Ill 2d 60) and (3) Drivers having

guests in their auto who are injured during an accident (Brown v Merlo, 106 Cal Rptr 388; 506 P 2d 212) - in all of the above instances the courts have ruled on constitutional grounds that the limitation was not reasonable.

CONCLUSION

This Court's decision concerning the appellant's petition for rehearing is of course of vital importance to him. It is also of importance to all those others who have been or will be damaged. The fact that the California Public Utilities Commission, by mere regulation, can purport to limit liability for negligence inflicted by a utility upon a subscriber to the negligible amounts provided, should shock the conscience of the Court. And, if for some reason, the Court can not see its way clearly to rule on the constitutional question concerning limitation of damages, the appellant pleads that the court find that due process has not been observed so that he may at last have his day before a true court of law.

CERTIFICATE OF GOOD FAITH

This petition is submitted in good faith and not for the purpose of delay.

Respectfully submitted,

s/s

Ross Shade

AFFIDAVIT OF SERVICE

I hereby certify that I have this date served the foregoing petition for rehearing upon all interested parties in this proceeding as shown below, addressed to each and including three copies, sent by first class mail, postage prepaid.

Signed under penalty of perjury this first day of May, 1976 at San Francisco, California.

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